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Providence Hospital d/b/a Providence Alaska Medical Center and Alaska Nurses Association. Case 19-CA-24469

July 10, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed on April 4, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 30, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 19-RC-12866. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 28, 1996, the General Counsel filed a Motion for Summary Judgment. On May 29, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response¹ the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding and further argues that the inclusion of supervisory and managerial employees tainted the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

¹ The Respondent's request to supplement the record with various documents from the underlying representation case is granted. To the extent that the Respondent's response can be construed as requesting full Board consideration, it is denied.

ceeding.² We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Washington corporation, with an office and place of business in Anchorage, Alaska, has been engaged in the business of operating a medical center. During the 12-month period proceeding the issuance of the complaint, the Respondent in conducting its business operations described above, had gross sales of goods and services valued in excess of \$500,000 and purchased and received at its Anchorage facility goods and materials valued at more than \$50,000 directly from points outside the State of Alaska. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 11 and 12, 1994, the Union was certified on March 21, 1996,³ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, part-time, and registry Registered Nurses employed by the Employer at its Anchorage, Alaska, facility, including all staff nurses, clinical nurses I, II, and III, flight nurses, nurse clinicians, clinical nurse specialists, healthy hearts program nurses, radiation oncology nurses, special procedures nurses, mammography nurses, IV therapy nurses, neonatal nurse practitioners, charge

² In its response, the Respondent asserts that the Board never considered its contention that certain alleged managerial and other positions that provide no patient care were improperly included in the bargaining unit. This contention has no merit. In his Decision and Direction of Election, the Regional Director specifically included those classifications in the unit, and the Board granted review solely with respect to the registered nurses whose supervisory status was in dispute and denied the request for review in all other respects.

³ The certification followed the Board's Decision on Review and Order, 320 NLRB No. 49 (Jan. 3, 1996), in which the Board overruled the Respondent's challenges to the ballots of 153 voters on the basis that they were statutory supervisors. The Board Decision directed the opening and tallying of those ballots and other unchallenged impounded ballots. Member Cohen dissented in the representation proceeding, but because no new issues are raised, he joins his colleagues in granting the General Counsel's Motion for Summary Judgment.

nurses, emergency department psychiatric nurse consultation supervisor, admitting utilization review nurse, radiology nurse IQ coordinator, utilization review coordinator/discharge planner, home care coordinator, RN education coordinators, employee health staff nurse, infection control coordinator, home health care team leader, home health care team leader assistant, endoscopy coordinator, lead RN outpatient/neurological rehabilitation, and on-call lead home health; but excluding director of nursing resource services, assistant director of nursing, care center director, care team analyst, chief flight nurse, clinical manager, discharge planner/social worker, employee health care specialist, health care safety specialist, healthy hearts program coordinator, home health care assistant director, home health care coordinator RN/MSW, home health care director, home health care nursing supervisor, home health care rehab supervisor, lifeguard program director, mental health program director, nursing directors, nursing resource services specialist, nursing supervisor, quality improvement data specialist, rehabilitation case manager, shift coordinator, quality improvement coordinator home health, cardiovascular data coordinator, non-RN education coordinator, all other professional employees, technical employees, skilled maintenance employees, business office clerical employees, all other non-professional employees, managerial employees, confidential employees, and guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since March 22, 1996, the Union has requested the Respondent to bargain and, since that same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 22, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Providence Hospital d/b/a Providence Alaska Medical Center, Anchorage, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Alaska Nurses Association, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time, part-time, and registry Registered Nurses employed by the Employer at its Anchorage, Alaska, facility, including all staff nurses, clinical nurses I, II, and III, flight nurses, nurse clinicians, clinical nurse specialists, healthy hearts program nurses, radiation oncology nurses, special procedures nurses, mammography nurses, IV therapy nurses, neonatal nurse practitioners, charge nurses, emergency department psychiatric nurse consultation supervisor, admitting utilization review nurse, radiology nurse IQ coordinator, utilization review coordinator/discharge planner, home care coordinator, RN education coordinators, employee health staff nurse, infection control coordinator, home health care team leader, home health care team leader assistant, endoscopy coordinator, lead RN outpatient/neurological rehabilitation, and on-call lead home health; but excluding director of nursing resource services, assistant director of nursing, care center director, care team analyst, chief flight nurse, clinical manager, discharge planner/social worker, employee health care specialist, health care safety specialist, healthy hearts program coordinator, home health care assistant director, home health care coordinator RN/MSW, home health care director, home health care nurs-

ing supervisor, home health care rehab supervisor, lifeguard program director, mental health program director, nursing directors, nursing resource services specialist, nursing supervisor, quality improvement data specialist, rehabilitation case manager, shift coordinator, quality improvement coordinator home health, cardiovascular data coordinator, non-RN education coordinator, all other professional employees, technical employees, skilled maintenance employees, business office clerical employees, all other non-professional employees, managerial employees, confidential employees, and guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Anchorage, Alaska, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 4, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 10, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Alaska Nurses Association as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, part-time, and registry Registered Nurses employed by us at our Anchorage, Alaska, facility, including all staff nurses, clinical nurses I, II, and III, flight nurses, nurse clinicians, clinical nurse specialists, healthy hearts program nurses, radiation oncology nurses, special procedures nurses, mammography nurses, IV therapy nurses, neonatal nurse practitioners, charge nurses, emergency department psychiatric nurse consultation supervisor, admitting utilization review nurse, radiology nurse IQ coordinator, utilization review coordinator/discharge planner, home care coordinator, RN education coordinators, employee health staff nurse, infection control coordinator, home health care team leader, home health care team leader assistant, endoscopy coordinator, lead RN outpatient/neurological rehabilitation, and on-call lead home health; but excluding director of nursing resource services, assistant director of nursing, care center director, care team analyst, chief flight nurse, clinical manager, discharge planner/social worker, employee health care specialist, health care safety specialist, healthy hearts program coordinator, home health care assistant director, home health care coordinator RN/MSW, home health care director, home health care nursing supervisor, home health care rehab supervisor, lifeguard program director, mental health program director, nursing directors, nursing resource services specialist, nursing supervisor, quality improvement data specialist, rehabilitation case manager, shift coordinator, quality improvement coordinator.

dinator home health, cardiovascular data coordinator, non-RN education coordinator, all other professional employees, technical employees, skilled maintenance employees, business office clerical employees, all other non-professional employees,

managerial employees, confidential employees, and guards and supervisors as defined by the Act.

PROVIDENCE HOSPITAL D/B/A/ PROVIDENCE ALASKA MEDICAL CENTER